

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon
A Court Publication Supported by the Attorney Admissions Fund
Vol. XI, No. 12, December 9, 2005

Fair Labor Standards Act

In this case, plaintiffs bring federal and state wage-related claims against defendant which include an overtime claim based on an alleged misclassification of certain managers as exempt employees, a minimum wage and overtime claim based on the use of a timesheet by hourly employees which allegedly causes consistent "rounding down" of hours, and an Oregon claim for late-payment of wages due upon termination. Plaintiffs sought an order certifying the timesheet claims as a "collective action" under the Fair Labor Standards Act. Defendant moved to dismiss the minimum wage claim for failure to state a claim. In two separate Findings & Recommendations which were adopted in a single order, Judge Hubel recommended that plaintiffs' collective action certification motion be denied and that defendant's motion to dismiss the minimum wage claim be granted. As to the collective action certification motion, Judge Hubel concluded that given the nature of the timesheet claims, individual inquiries of each

putative plaintiff were required to determine if they were "similarly situated" and that the predominance of those individual inquiries was inconsistent with certification of the claims as a collective action. As to the motion to dismiss, Judge Hubel concluded that given the actual hourly wage earned by the named plaintiffs, they could not state a minimum wage claim even accepting as true that the plaintiffs may not have been paid for all hours worked as a result of the timesheet in use. Judge Hubel rejected the plaintiffs' argument that the federal minimum wage law does not incorporate a state's minimum wage and does not require an employer to pay the greater of the then-prevailing federal minimum wage or the appropriate state minimum wage.

McElmurry v. US Bank Nat'l Assoc. CV 04-642-HU (Findings & Recommendations July 29, 2005, and August 24, 2005. Order adopting by Judge Haggerty Oct. 7, 2005). Plaintiffs' Counsel: Bud

Bailey

Defense counsel: Carol Bernick

Motion to Remand

Plaintiff filed a motion to remand this action to Multnomah County Circuit Court for the State of Oregon. Plaintiff's complaint alleged claims for breach of contract, breach of the covenant of good faith and fair dealing, and intentional interference with plaintiff's economic relationship.

The issue before the court is the principal place of business of defendant corporation and therefore whether complete diversity of citizenship exists thus entitling this court to maintain subject matter jurisdiction over the controversy.

Judge Aiken, after hearing oral argument on the issue, found that the court maintains diversity jurisdiction based on the defendant's principle place of business. Plaintiff's motion to remand was denied. Morton & Assoc. v. McCain Foods USA, Inc. et al., CV 05-1091-AA (Opinion November 15, 2005) Plaintiff's Counsel: Gary Lekas

2 The Courthouse News

Defense Counsel: Daniel
Barnhart, Jeremy Sacks

Excessive Force/Due Process

In this 42 U.S.C. § 1983 case, plaintiff brought several claims against defendants Union County and Steven Oliver, the former Union County Sheriff, arising out of an incident in which plaintiff alleged that Oliver used excessive force against him while he was attempting to gain possession of an impounded care at the Sheriff's Office in LaGrande, Oregon. The claims included a Fourth Amendment claim against Oliver for excessive force, a substantive due process claim of excessive force against Oliver, a municipal liability claim against the County based on a failure to train theory, and Oregon common law claims for negligence and battery against both Oliver and the County. Judge Hubel recommended that defendants' summary judgment motion (which was directed at all claims except the Fourth Amendment claim) be granted on all but the battery claim alleged against Oliver, but with the County substituted as the defendant. He also recommended that plaintiff's motion for summary judgment on the Fourth Amendment and substantive due process claims, be denied. Judge Hubel

recommended denying plaintiff's motion on the Fourth Amendment claim because there were disputed issues of fact regarding the incident. He recommended granting defendants' motion and denying plaintiff's motion on the substantive due process claim because the claim was superfluous of the Fourth Amendment claim. He recommended granting defendants' motion as to the section 1983 municipal liability claim against the County because there was no evidence of a policy or practice of unconstitutional use of force or of inadequate training. Judge Hubel also rejected plaintiff's argument that Oliver's actions themselves rendered the county liable as a policymaker because even assuming an independently elected Sheriff could be a final policymaker regarding the use of force, the allegations at issue were an isolated, instinctive act not a result of a deliberative process. Judge Hubel also recommended that defendants' motion be granted as to the negligence claim, both as to the County and to Oliver, because Oregon does not recognize a what amounted to "negligence-based" battery claim. Finally, Judge Hubel recommended that as to the

battery claim, the County should be substituted as the proper defendant under the Oregon Tort Claims Act and the jury should decided the disputed issues of fact regarding the incident.

Paul v. Union County, CV 04-1543-HU.

(Findings & Recommendation, August 22, 2005; Order adopting by Judge Haggerty, November 1, 2005).

Plaintiffs' Counsel: Harold
Shepherd

Defense counsel: Bruce
Mowery

Compel Arbitration

Plaintiff brought an action against defendants pursuant to the Fair Credit Reporting Act. Defendants moved to compel arbitration and abate the action against it based on a arbitration clause it contends was contained in a "bill stuffer" mailed to plaintiff along with her monthly statement.

Judge Aiken granted defendants' motion to compel arbitration and stayed the action. Franceschi v. Experian Information Solutions, et al., CV 04-354-AA (Opinion, January 24, 2005)
Plaintiff's Counsel: Robert Sola
Defense Counsel: John Langslet

3 The Courthouse News